

## **DETAILED ACTION**

### ***Specification***

The abstract of the disclosure is objected to because reference characters mentioned in the abstract should be surrounded by parentheses to avoid confusion. Correction is required.

See MPEP § 608.01(b).

### ***Claim Objections***

Claim 5 is objected to because of the following informalities: in line 3, “mouth is” should be changed to --mouth and-- to correct an apparent typographical mistake. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 2, the limitation “open to a position deep inside” is not clear because examiner is uncertain which element the nozzles must be opened deep inside to or what exactly is meant by the term “inside.”

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Lerk et al. (US 5,301,666, herein referred to as "Lerk").

Regarding claims 1 and 4, Lerk discloses an inhalation-type medicine application comprising a medicine container (1) configured to hold powder medicament (12) therein, a mouthpiece (11) configured to be held in the mouth during inhalation, and an admission port (57) provided to the mouthpiece and configured to introduce a medicine powder flow including medicine powder (see Figure 2), wherein the mouthpiece is provided with air nozzles (27) from which air is blown off to the admission port (see Figure 2, column 2, lines 55-60, and column 12, lines 18-25).

Regarding claim 2, Lerk discloses that the nozzles are open to a position deep inside from an end of the mouthpiece (i.e., the nozzles receive air flow from the bottom of the device through channel 15, for example, or the nozzles open at a far end of the mouthpiece from the exit orifice)

Regarding claim 3, Lerk discloses the nozzles open to an end part of the mouthpiece (i.e., the nozzles are open at the bottom end of the mouthpiece as seen in Figure 2).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lerk. Lerk is silent as to the length of the mouthpiece. However, absent a critical teaching and/or a showing of unexpected results from the mouthpiece being 30-80 mm in length, examiner contends that the length of the mouthpiece would have been an obvious design consideration to one of ordinary skill in the art at the time the invention was made in order to produce a desired air flow pattern, allow more mixing of the medicament, or to accommodate patients of different sizes (i.e., pediatric/adult). Furthermore, it appears as though the device of Lerk would perform equally well with a mouthpiece 30-80 mm in length and a mere change in dimension does not patentably distinguish the invention over the prior art.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Narodylo et al. is cited to show another inhaler that uses a stream curtain to control the flow of medicament into the respiratory tract.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTEN C. MATTER whose telephone number is (571)272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Kristen C. Matter/  
Examiner, Art Unit 3771

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771